

FILED

MAR 18 2003

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CLERK *mwm*
U. S. DISTRICT COURT
MIDDLE DIST. OF ALA.

CHRISTOPHER BARBOUR,)
Petitioner,)
v.) CIVIL ACTION NO. 01-T-612-N
MICHAEL HALEY, Commissioner)
Alabama Department of Corrections,)
Respondent.)

O R D E R

This matter is before the court on Petitioner's Motion for Preservation of DNA Evidence (Doc. # 4). Pursuant to this court's instructions, the Respondent has filed a document entitled "Notification of Evidence Relating to the Barbour's Motion for Preservation of DNA Evidence" wherein he identifies a box in the possession of the Montgomery Police Department which includes "several items which could be 'blood and semen evidence'". The Respondent has also represented in this Notification that he inquired with the Montgomery County District Attorney's Office and the Alabama Department of Forensic Sciences as to whether those agencies maintained any evidence from Barbour's state court case, and was informed that neither agency had any such evidence.

The court recognizes that this evidence may never become material to this case due to the overriding issue of whether the statute of limitations bars consideration of this action

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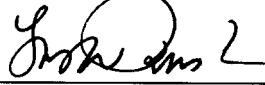
by this court. However, the court concludes that it is necessary to grant the petitioner's motion to preserve this evidence so that the evidence can be available should the court determine that it is probative of the statute of limitations issue or should the court determine that this action is properly before the court and that the evidence is probative of any issue to be decided on the merits.

Accordingly, it is

ORDERED that the Petitioner's Motion for Preservation of DNA Evidence (Doc. # 4) be and hereby is GRANTED to the extent that the physical evidence in the custody of the Montgomery Police Department shall be preserved and maintained in its original form until further directions from this court. The parties are ADVISED that if it is determined that any additional DNA evidence exists, the court will entertain a subsequent motion for preservation at that time.

The Clerk of the Court is DIRECTED to send a copy of this Order to the Montgomery Police Department.

DONE this 18ⁿ day of March, 2003.


SUSAN R. WALKER
UNITED STATES MAGISTRATE JUDGE